

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT N.Y.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

★ MAR 12 2021 ★

LONG ISLAND OFFICE

JAMES S. GENTILE

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-against-

TOURO LAW CENTER

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Complaint for Employment
Discrimination

Case No.

CV-21-1345

(to be filled in by the Clerk's Office)

Jury Trial: ☒ Yes ☐ No
(check one)

BROWN, J.
LINDSAY, M.J.

FILED
2021 MAR 12 PM 2:28
CLERK
U.S. DISTRICT COURT
E.D.N.Y.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	<u>JAMES S. GENTILE</u>
Street Address	<u>166 Dahlia Drive</u>
City and County	<u>Mastic Beach, Suffolk County</u>
State and Zip Code	<u>New York 11951</u>
Telephone Number	<u>631 786 2848</u>
E-mail Address	<u>JSGentile@hotmail.com</u>

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name	<u>TORO LAW Center</u>
Job or Title (if known)	<u></u>
Street Address	<u>225 Eastview Drive</u>
City and County	<u>Centra Island Suffolk County</u>
State and Zip Code	<u>New York 11722</u>
Telephone Number	<u>631 761 7000</u>
E-mail Address (if known)	<u></u>

Defendant No. 2

Name	<u></u>
Job or Title (if known)	<u></u>
Street Address	<u></u>
City and County	<u></u>

State and Zip Code _____

Telephone Number _____

E-mail Address
(if known) _____**C. Place of Employment**

The address at which I sought employment or was employed by the defendant(s) is:

Name TORRE LAW Center
 Street Address 225 Eastview Drive
 City and County Central Islip, Suffolk County
 State and Zip Code New York, 11722
 Telephone Number 631 761 7000

II. Basis for Jurisdiction

This action is brought for discrimination in employment pursuant to (check all that apply):

- ☐ Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

(Note: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

- ☒ Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 to 634.

(Note: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.)

- ☒ Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 to 12117.

(Note: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

☐ Other federal law (*specify the federal law*):

☐ Relevant state law (*specify, if known*):

☐ Relevant city or county law (*specify, if known*):

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. The discriminatory conduct of which I complain in this action includes (*check all that apply*):

- ☒ Failure to hire me.
- ☐ Termination of my employment.
- ☐ Failure to promote me.
- ☐ Failure to accommodate my disability.
- ☐ Unequal terms and conditions of my employment.
- ☐ Retaliation.
- ☐ Other acts (*specify*): _____

(Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.)

B. It is my best recollection that the alleged discriminatory acts occurred on date(s)

NOV-DEC 2018

C. I believe that defendant(s) *(check one)*:

- ☒ is/are still committing these acts against me.
☐ is/are not still committing these acts against me.

D. Defendant(s) discriminated against me based on my *(check all that apply and explain)*:

- ☐ race _____
☐ color _____
☐ gender/sex _____
☐ religion _____
☐ national origin _____
☒ age. My year of birth is 1964. *(Give your year of birth only if you are asserting a claim of age discrimination.)*
☒ disability or perceived disability *(specify disability)*
Diabetes

E. The facts of my case are as follows. Attach additional pages if needed.

* See Statement of Claim/Facts

(Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, or the charge filed with the relevant state or city human rights division.)

IV. Exhaustion of Federal Administrative Remedies

- A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding the defendant's alleged discriminatory conduct on (date)

11/14/19

- B. The Equal Employment Opportunity Commission (check one):

- ☐ has not issued a Notice of Right to Sue letter.
☒ issued a Notice of Right to Sue letter, which I received on (date)

1/6/21

(Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.)

- C. Only litigants alleging age discrimination must answer this question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding the defendant's alleged discriminatory conduct (check one):

- ☒ 60 days or more have elapsed.
☐ less than 60 days have elapsed.

V. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

See relief page attached

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

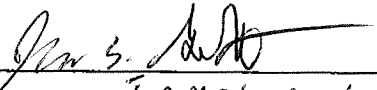
A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: Feb. 21, 2021

Signature of Plaintiff

Printed Name of Plaintiff



JAMES S. GENTILE

STATEMENT OF CLAIM/FACTS

I am a person with two qualifying disabilities. On or about October 2018 I responded to an ad on the employment website Indeed.com for a position at Touro law Center. I was given an interview later that month. The respondent was notified of my disability during the application process and at the verbal interview. I cannot stand for long periods, and need to use the elevators rather than stairs. The position would not require standing for any length of time, and the building has easy elevator access. I even had to make it a priority when I moved to a new home during the time of this situation to purchase a ranch type house with no stairs. We discussed the facilities of the law center and it was understood that they were adequate for my needs. Especially the importance of medical benefits being offered, to offset the lower salary, as I did not have insurance at that time. This turned out to be crucial, because a few months later I was hospitalized due to a heart problem aggravated by my diabetes. As a result of the hospital stay, and lack of insurance, I now owe about over \$60,000 in medical bills. I believe I was discriminated against on the basis of both my age and physical disability when I was not hired for the position of Director of Veteran's Affairs Clinic, but a far less qualified, younger person with no disabilities was hired instead. This information is based on all available information I was able to gather during the pendency of this process.

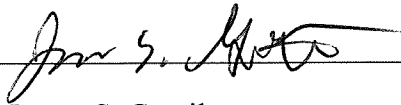
After the initial interview I was informed by my interviewer that I was the best qualified candidate for the position, but the Dean of the center would have the final say. I was told that after a second interview with the dean, the job would be available beginning in January 2019. Several weeks later (Dec. 2018) I was informed by my interviewer, by phone, that the Dean had decided to hire someone else with more combat military experience and service related medals. This despite the position having nothing to do with combat planning or execution. During my hourlong interview in October there was virtually no discussion about my military service or medals awarded. If military experience were important I would think the fact that my experience as a nuclear weapons specialist, with the highest possible security clearance (top secret/restricted), would have been considered sufficient for the job at hand. During the call I was told by my interviewer that he agreed with my contention that the position has nothing to do with any combat or military honors, and that he still believed I was the best qualified candidate for the position. He even informed me that he "went to bat for me, and argued with the Dean that I should be hired, but the Dean dismissed him and hired the other person on his own authority". After some consideration I filed an action with the EEOC, and have been provided with a Right to Sue letter (herein attached). Since then, the law center's position and explanations about the situation has drastically changed, and many facts that were not known to me have been brought to light.

One of several examples is that some other unknown person (who's qualifications and military experience is not available to me at this time) was offered the position after me, but before the person who currently holds the position. A second fact discovered by me was that the Dean, who supposedly declined my application, was never even informed that I was a candidate. A third fact I was able to discover was that the last several people who held the position had little or no combat experience or were particularly decorated with medals. In fact, the last person was in the coast guard, and her advantage, like mine, was that she was a retired veteran for some time. The university has stressed that "veteran" status was important for the job. But in this case they are twisting the meaning of veteran to suit their narrative. Instead of the commonly

understood meaning of veteran (a person who has served and has been discharged), they are using the idea of experience with combat and current active duty military experience. Experience of that type may be relevant if this were a combat posting, but practically useless in the civilian law courts where actually discharged veterans will need a person with legal, not military experience. As an aside, the person who they hired for the position was not even a lawyer in the military, and was only admitted to the bar for about one year prior. I have been an attorney in good standing for 18 years now.

I believe the reason that I was not hired was because of my age and health, and not any artificial construct that the law center is now manufacturing. I believe examples such as these show that the law center would make up any excuse to avoid my employment due to my conditions. I want the opportunity to examine the law centers claims and explanations about this incident. I believe the law center, upon closer examination of the facts and my qualifications and status after receiving my EEOC complaint, recognized its error and are offering any excuse (factually valid, truthful or not) to try and avoid responsibility in this matter. With the benefit of trial, the truth of the matter may be revealed and my rights be protected. Based on the law centers actions and current evidence and circumstances present in this case I have a strong case and a jury, based upon the preponderance of that evidence, will find in my favor. I also believe that with the benefit of discovery and further forthcomings my case will only become stronger.

Dated 2/21/21


James S. Gentile

RELIEF SOUGHT

- 1) Appointment as Director of the Veteran's Clinic at Touro Law Center
- 2) Past earnings of \$140,000 (estimated yearly salary from 1/1/18)
- 3) Compensation for medical costs of \$65,000 (as of 2/1/21)
- 4) Compensation for medical insurance premiums from 1/1/18
- 5) Any financial incentives, bonuses or other monetary compensation paid out to position from 1/1/18
- 6) Any other compensation or damages the court may deem appropriate.

Punitive damages on based on Universities attempts to modify facts of situation to avoid responsibility for discriminatory practices, if the facts warrant such damages.



**U.S. Equal Employment Opportunity Commission
New York District Office**

33 Whitehall Street
5th Floor
New York, NY 10004
(929) 506-5270
TDD: 1-800-669-6820
Fax: (212) 336-3625
1-800-669-4000

Respondent: TOURO LAW CENTER
EEOC Charge No.: 520-2019-05879
FEPA Charge No.:

November 14, 2019

James Gentile
166 Dahlia Drive
Village Of Mastic Beach, NY 11951

Dear Mr. Gentile:

This is to acknowledge receipt of the above-numbered charge of employment discrimination against the above-named respondent. Please use the "EEOC Charge No." listed above whenever you call us about this charge. The information provided indicates that the charge is subject to:

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | Title VII of the Civil Rights Act of 1964 (Title VII) |
| <input checked="" type="checkbox"/> | The Age Discrimination in Employment Act (ADEA) |
| <input checked="" type="checkbox"/> | The Americans with Disabilities Act (ADA) |
| <input type="checkbox"/> | The Equal Pay Act (EPA) |
| <input type="checkbox"/> | The Genetic Information Nondiscrimination Act (GINA) |

You need do nothing further at this time. We will contact you when we need more information or assistance. A copy of the charge or notice of the charge will be sent to the respondent within 10 days of our receipt of the charge as required by our procedures.

Please be aware that we will send a copy of the charge to New York State Division Of Human Rights Federal Contract Unit One Fordham Plaza, 4 Fl. Bronx, NY 10458 as required by our procedures. If the charge is processed by that agency, it may require the charge to be signed before a notary public or an agency official. Then the agency will investigate and resolve the charge under their statute. If this occurs, section 1601.76 of EEOC's regulations entitles you to ask us to perform a Substantial Weight Review of the agency's final finding. To obtain this review, a written request must be made to this office within 15 days of receipt of the agency's final finding in the case. Otherwise, we will generally adopt the agency's finding as EEOC's.

The quickest and most convenient way to obtain the contact information and the status of your charge is to use EEOC's Online Charge Status System, which is available 24/7. You can access the system via this link (<https://publicportal.eeoc.gov/portal>) or by selecting the "My Charge Status" button on EEOC's Homepage (www.eeoc.gov). To sign in, enter your EEOC charge number, your zip code and the security response. An informational brochure is enclosed that provides more information about this system and its features.

While your charge is pending, please notify us of any change in your address, or where you can be reached if you have any prolonged absence from home. Your cooperation in this matter is essential.

Sincerely,

David L. Reinman
ADR Coordinator
(929) 506-5306

Office Hours: Monday – Friday, 8:30 a.m. - 5:00 p.m.
www.eeoc.gov

Enclosure(s): cc:

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC 520-2019-05879	
New York State Division Of Human Rights and EEOC <i>State or local Agency, if any</i>			
Name (indicate Mr., Ms., Mrs.) Mr. James Gentile		Home Phone (631) 786-2848	Year of Birth 1964
Street Address City, State and ZIP Code 166 Dahlia Drive, VILLAGE OF MASTIC BEACH, NY 11951			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name TOURO LAW CENTER		No. Employees, Members 	Phone No. (631) 761-7000
Street Address City, State and ZIP Code 225 Eastview Drive, CENTRAL ISLIP, NY 11722			
Name 		No. Employees, Members 	Phone No.
Street Address City, State and ZIP Code 			
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input checked="" type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 11-30-2018 01-18-2019 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)). <p>I am a male with a qualifying disability. The Respondent was notified of my disability during the application process. I believe I was discriminated against on the basis of my age and disability when I was not hired for the Director of Veterans Affairs position and a lessor qualified younger, non-disabled applicant was hired.</p> <p>After my initial interview, I was informed that I was the perfect candidate and I met all of the requirements, but I will need to be interviewed by the dean and he makes the final decision. The Dean rejected my application and did not grant me an interview.</p> <p>Based on the above, I believe I was discriminated against in violation of Title I of the Americans with Disabilities Act of 1990, as amended and the Age Discrimination in Employment Act, as amended.</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct.		NOTARY - When necessary for State and Local Agency Requirements I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	
Digitally signed by James Gentile on 10-03-2019 12:41 PM EDT			

jsgentile@hotmail.com

From: GWENDOLYN HOY <GWENDOLYN.HOY@EEOC.GOV>
Sent: Wednesday, January 6, 2021 8:56 AM
To: jsgentile@hotmail.com
Subject: EEOC Charge No.:520-2019-05879

Mr. Gentile,

The EEOC has made a determination on the above-mentioned charge of discrimination.

The Respondent has provided a legitimate, non-discriminatory reason for not hiring you. Respondent's Law center's Veterans' and Servicemembers' Rights Clinic has the largest concentration of veterans anywhere in the country and is the sight of a major VA hospital, the Northport Veterans Affairs Medical Center. Respondent was aware of veteran's reluctance to discuss and share their problems and issues. Respondent asserts that veterans' legal needs are better served by having them represented by other veterans. Respondent looked for applicants with significant military experience with honors, as well as practical legal experience. While all candidates that were interviewed had varying levels of legal skills and experience, military experience and honors played a major part in differentiating candidates. Individuals that did not have the military experience and honors were not chosen for a second interview. Respondent used this legitimate, non-discriminatory reason to pick the most qualified applicant for this position and felt that it was necessary to successfully connect the Respondent's clinic to the veteran community.

The EEOC will issue the dismissal and notice of rights to sue to you shortly. If you would like for the EEOC to issue you a notice of rights to sue upon request then please request it asap.

Thank you,

Gwendolyn Hoy
Federal Investigator
EEOC
33 Whitehall Street, 5th Floor
New York, NY 10004

EEOC Form 161-B (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: **James Gentile**
166 Dahlia Drive
Village Of Mastic Beach, NY 11951

From: **New York District Office**
33 Whitehall Street
5th Floor
New York, NY 10004



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

520-2019-05879

Gwendolyn D. Hoy,
Investigator

(929) 506-5313

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)



More than 180 days have passed since the filing of this charge.



Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.



The EEOC is terminating its processing of this charge.



The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**



The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice**. Otherwise, your right to sue based on the above-numbered charge will be lost.



The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible**.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Gwendolyn D Hoy

Digitally signed by Gwendolyn D Hoy
 DN: cn=Gwendolyn D Hoy, o=EEOC, ou=NYDO,
 email=gwendolyn.hoy@eEOC.gov, c=US
 Date: 2021.01.06 12:22:35 -0500

For

Enclosures(s)

Judy A. Keenan,
District Director

(Date Mailed)

CC:

Linda Baurle
Assistant Dean for Administration
Touro Law Center
225 Eastview Drive
Central Islip, NY 11722

Peter A. Romero
LAW OFFICE OF PETER A. ROMERO PLLC
825 Veterans Highway
Hauppauge, NY 11788

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JAMES S. GENTILE

v.

TOURO LAW CENTER

COMPLAINT FOR EMPLOYMENT DISCRIMINATION

FILE #

Filed by

JAMES S. GENTILE

166 DAHLIA DRIVE

MASTIC BEACH, NY 11951

631 786-2848

3/12/21